

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Stone Ridge
Development, LLC

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Eric L. Lipman on June 1, 2007, at the Minneapolis offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by, or on behalf of, Stone Ridge Development, LLC (Respondent). Following a post-hearing submission from the Department on June 1, 2007, the hearing record closed.

STATEMENT OF THE ISSUES

1. Whether the Respondent, by failing to use the proceeds from a certain contract to pay a sod subcontractor, violated Minn. Stat. § 326.91, subd. 1 (8) (2006)?
2. Whether the Respondent has performed in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4) (2006)?
3. Whether the Respondent, by failing to respond to the Department's requests for information, violated Minn. Stat. § 45.027, subs. 1 and 1a (2006)?
4. Whether the Respondent, by failing to satisfy a judgment obtained by Lumber One Avon, Incorporated, has demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1 (6) (2006)?
5. Whether it is appropriate to take disciplinary action against the residential building contractor license held by the Respondent?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 6, 2007, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of and Order for Hearing) in this matter was mailed to the following addresses: P.O. Box 403, Big Lake, MN 55309 and 5547 Inverness Way, Big Lake, MN 55309.^[1] The Notice of and Order for Hearing indicated that a Prehearing Conference would be held in this matter on March 28, 2007.^[2]

2. On March 20, 2007, an Amended Statement of Charges in this matter was mailed to the following addresses: P.O. Box 403, Big Lake, MN 55309 and 5547 Inverness Way, Big Lake, MN 55309.^[3] A transmittal letter to the Amended Statement of Charges reiterated that a Prehearing Conference would be held in this matter on March 28, 2007.^[4]

3. At the March 28, 2007 Pre-Hearing Conference, Jeffrey D. Anderson entered an appearance on behalf of Stone Ridge Development, LLC. Mr. Anderson participated in the scheduling of further proceedings, including the selection of a hearing date of June 1, 2007.

4. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

....

Pursuant to Minn. Stat. § 45.027, subd. 6 (2006), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent(s) violated any law, rule or order related to the duties entrusted to the Commissioner.^[5]

5. No one appeared at the June 1, 2007 hearing on behalf of Respondent. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Stone Ridge Development, LLC, or Mr. Anderson, following adjournment of the hearing on June 1, 2007.

6. The Amended Statement of Charges alleges that:

(a) Respondent is licensed as a residential building contractor by the Department, License No. 20458571.

- (b) In November 2006, the Department received a complaint from Waverly, Minnesota residents Carol Roddy and James Cantin. The Department's investigation revealed that Roddy and Cantin purchased a home from Respondent on September 15, 2006. Respondent had constructed the home. Fifteen hundred dollars (\$1,500) of the purchase price was allocated to the installation of sod and trees. The trees were not planted. Additionally, Respondent failed to pay the sod subcontractor for the sod installed. Respondent also failed to respond to Roddy and Cantin's repeated requests for repairs under the contract's one-year warranty.
- (c) On November 28, 2006, the Department sent a letter to Respondent requiring a written response to the Roddy and Cantin complaint by December 12, 2006. No response was received.
- (d) On December 16, 2006, the Department sent a second letter requiring a response by December 28, 2006. No response was received.
- (e) On January 4, 2007, the Department sent a third request for information requiring a response by January 17, 2007. No response was received.
- (f) In March 2007, the Department received a complaint from Lumber One Avon Inc. of Avon, Minnesota. The Department's investigation revealed that on December 18, 2006, Lumber One obtained a \$1,941.73 judgment against Respondent. To date, the judgment has not been satisfied.

7. The allegations contained in the original and amended Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 326.91, and Executive Order 193.^[6]

2. Respondent received actual notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled evidentiary conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original and amended statement of charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the amended statement of charges, Respondent, by failing to use the proceeds from the Roddy-Cantin contract to pay a sod subcontractor, violated Minn. Stat. § 326.91, subd. 1 (8) (2006).

6. Based upon the facts set forth in the amended statement of charges, Respondent, by his breach of contract, violated Minn. Stat. § 326.91, subd. 1 (4) (2006).

7. Based upon the facts set forth in the amended statement of charges, Respondent, by failing to respond to the Department's request for information, violated Minn. Stat. § 45.027, subds. 1 and 1a (2006)

8. Based upon the facts set forth in the amended statement of charges, Respondent demonstrated financial irresponsibility in connection with the unpaid judgment referenced above, in violation of Minn. Stat. § 326.91, subd. 1 (6) (2006).

9. Minn. Stat. § 326.91, subds. 1 (5) and 4 empowers the Commissioner to take disciplinary action against the Respondent, for his violations of agency orders, state statute and state rules.

10. The imposition of a disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that disciplinary action be taken against Stone Ridge Development, LLC.

Dated: June 21, 2007.

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digital Recording
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155-4307, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] See, Affidavit of Jean-Anne Gates (February 6,2007).

^[2] Notice and Order for Hearing, at 1.

^[3] See, Affidavit of Jean-Anne Gates (March 20,2007).

^[4] Letter of Michael J. Tostengard, at 1.

^[5] Notice and Order for Hearing, at 3, ¶ 1 and 4, ¶ 10.

^[6] See, State of Minnesota Department of Administration Reorganization Order No. 193 (April 4, 2005) ("The responsibilities of the Department of Commerce as set forth in Minnesota Statutes 2004, sections 326.83 through 326.992, and Chapter 327A in relation to Residential Contractors and Remodelers are transferred to the Department of Labor and Industry").